**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**

**WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928**

**CRL.A.No. 97 of 2000()**

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**ST.2255/1996 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR DT. 17.12.99.**

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**APPELLANT: COMPLAINANT**

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**MANSOOR, S/O.PANIKKAVEETTIL MANNIYAL,**
**PROPRIETOR, KENZ ENTERPRISES,**
**THATHA BUILDING , M.G.ROAD,**
**THRISSUR 4.**

**BY ADV. SRI.SUNNY MATHEW**

**RESPONDENTS: ACCUSED & STATE**

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1. **K.B.JAYAKRISHNAN,**
   **PROPRIETOR, JAYKAY GROUPS,**
   **KALAKKATTU HOUSE,**
   **THANNITHODU P.O.,**
   **THANTHODU, PATHANAMTHITTA DISTRICT.**

2. **STATE OF KERALA, REP.BY THE**
   **PUBLIC PROSECUTOR,**
   **HIGH COURT OF KERALA AT ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B.KOSHY, J.**

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Crl. Appeal No. 97 of 2000

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Dated this the 21st day of February, 2007

**Judgment**

This appeal is filed by the complainant against acquittal of the accused under section 256 of the Code of Criminal Procedure. The complaint was filed alleging dishonour of cheque given by first respondent for insufficiency of funds. The respondent/accused did not appear before the court even though the court granted several times for the appearance of the accused. On 25.8.1997, non-bailable warrant was issued against the accused which was repeated on 17.10.1997, 17.1.1998 and 13.5.1998 and a fresh non-bailable warrant was issued on 19.3.1999. Again, notice was issued to the Sub Inspector of Police on 6.7.1999 and summons was issued to the Village Officer on 5.8.1999 and in spite of this, presence of the accused could not be secured. On 14.9.1999 steps were taken under section 299 of the Code of Criminal Procedure. Finally, appellant was informed that the case was posted to 27.12.1999. On 27.12.1999, appellant and his counsel were present in court, but, the case was not called. On enquiry, it was revealed that the case was actually posted on 17.12.1999 and the accused was acquitted on that day.

The appellant and his counsel could not attend the court on 17.12.1999 only because the clerk noted the date of posting as 27.12.1999 instead of 17.12.1999. The impugned order is a stereo-typed order without application of mind. Even though accused can be acquitted under section 256 Cr.P.C. for the absence of the complainant, it should not be done mechanically. On the facts and circumstances of the case, the impugned order is set aside and the matter is remanded.

The complainant shall appear before the trial court on 26.3.2007. Notice sent by this court was evaded. Fresh steps should be taken against the first respondent/accused.

Appeal is allowed by way of remand.

**J.B. KOSHY**
**(JUDGE)**

vaa

**J.B.Koshy, J.**

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**Crl. A. No.97 of 2000**

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**Judgment**

**21-2-2007**